

Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River

The Honourable Bruce I. Cohen, Commissioner

Closing Written Submissions and Recommendations of the
Public Service Alliance of Canada, BC Region
and Union of Environment Workers/BC

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CONCISE SUMMARY AND LIST OF RECOMMENDATIONS

RECOMMENDATIONS

#1: NO REDUCTION OF PRESENT FEDERAL CAPACITY (PAGES 9-21)

Department of Fisheries Oceans Canada

- a. Funding for habitat monitoring, enforcement and enhancement be maintained if not improved. In particular, the funding for conservation and protection ought to be raised in the Pacific Region to match the levels in other regions. Further no positions eliminated, particularly those involving habitat monitoring, enforcement and enhancement;
- b. Improve enforcement as recommended by Regional Director of Conservation and Protection, Officer Randy Nelson;
- c. No federal devolution of fishery management responsibility, including through privatization;

Environment Canada

- d. No reduction in funding or positions that touch upon the Fraser River sockeye salmon;

First Nations knowledge, experience, and perspectives

- e. The Department should increase its internal capacity of aboriginal knowledge, experience and perspective by employing more First Nations in the Department.

#2: FULL FUNDING AND TIMELY IMPLEMENTATION OF WILD SALMON POLICY WITH A SPECIFIC PLAN FOR IMPLEMENTATION (PAGE 22)

- a. Increase funding so that Department can complete the full and timely implementation of the Wild Salmon Policy. Increased funding ought to be provided so that the Wild Salmon Policy can be implemented within the next three years.

#3: DEPARTMENT SHOULD REMAIN A NEUTRAL SCIENCE BASED REGULATOR AND SHOULD ACCELERATE ITS EXAMINATION ABOUT THE SCIENCE (PAGE 23)

- a. The Department should remain a neutral, science based regulator, ensuring that the best evidence is used to set standards for fisheries, farmed and wild, that protect the environment and the public interest.
- b. Crucial to the proper management decisions is increased science research and increased monitoring of stocks, especially in the open ocean.
- c. Increased science around all aquaculture forms, especially salmon, science that ensures that aquaculture proceeds in a manner that is sustainable to itself and the wild ecosystem

#4: NO INCREASE IN DUTIES OR OBLIGATIONS WITHOUT INCREASING RESOURCES (PAGES 24-6)

- a. Given the incredible demand on the department and its employees, no additional responsibilities or duties ought to be imposed without a correlating increase in the Department's resource.

SUMMARY

The Fraser River sockeye salmon play a key role in the cultural, social and economic fabric of British Columbians. The day to day responsibility for protecting this iconic fish in the interests of all British Columbians and Canadians rests on the members of the Public Service Alliance of Canada BC Region and Union of Environment Workers/BC (the “PSAC/UEW”) and other Fisheries and Oceans Canada (“DFO” or “Department”) employees.

The PSAC/UEW represents the majority of the hardworking women and men employed in the DFO. Their members work throughout the Department: working in the laboratories assisting with the science and research; working in the field, year-round, in all types of weather and outdoor conditions doing enforcement, enhancement, catch monitoring, and stock assessment; and they work in the offices, applying their specialized skill, experience and knowledge to the demanding tasks so that the Department can fulfill its tremendously important mandate not just to the public but also to the groups who rely on the Fraser River sockeye salmon.

The job of the DFO employees is necessarily hard, dealing with such a vital public resource which has so many competing demands placed upon it. The Commission has heard the tremendous demands made upon the Department. But the Department is not some disembodied entity -- the demands are placed upon the employees, who feel the full weight of these demands. Nevertheless, the DFO employees work diligently to protect and enhance this public resource. In fact, as the Commission heard, there is a lower turnover rate of employees in the Department which speaks to the commitment of the workers forgoing the opportunity of retirement to continue working for the betterment of the public resource.

While the Commission has heard much evidence about the workings of the Department, it has not heard from many of the workers. Nevertheless, when examining the Commission’s twin mandates, the dramatic reduction in the 2009 run and possible the changes to the Department, it will be important to keep in mind that the Department is simply a collection of people. Therefore, when the Commission is arriving at recommendations as to the Department’s future, it is not simply making recommendations affecting the Fraser River sockeye salmon but it is also, necessarily, making recommendations affecting the people who have made it their career to oversee the conservation and enhancement of this vital resource.

In these proceedings, the Commission has been provided with an unprecedented opportunity to explore the science relating to the Fraser River sockeye salmon and an opportunity to explore a multitude of explanations or theories about various factors that influence the Fraser River sockeye salmon. However, consistent with standing sought and obtained in these proceedings, the PSAC/UEW have taken a limited role as it is their view that since their members are the DFO employees who, on a daily basis, deal with the different participants to the Commission (including First Nations, commercial fisheries, aquaculture industry, and environmental groups) that it is not their role to take sides or advance specific positions. The PSAC/UEW believe that their members must remain as the trusted honest brokers so that they are not perceived by any of the participants as having a contrary or conflicting agenda that would influence their dealings with them. In the past, concerns have been expressed by some groups, particularly relating to

enforcement, as to a perceived impartiality of the DFO employees. The PSAC/UEW does not wish to return to those days.

The PSAC/UEW's view that it does not wish to place their members into a perceived conflict with the various users groups will also guide the recommendations they propose, and the responses to the recommendations of the other participants, with respect to "changes to the policies, practices and procedures of the Department in relation to the management of the Fraser River sockeye salmon fishery" as set out in the Terms of Reference. For example, this Commission has heard much evidence and will hear much debate about the impact, if any, of the aquaculture industry on wild salmon. The issues arising from aquaculture will no doubt be a vital part of the Commission's report and recommendations, regardless of whatever findings are made. However, our clients have taken no position because as their members are the DFO employees that will have to oversee the groups involved in both aquaculture and wild salmon they do not want to be perceived as siding with one group over the other.

Concise, comprehensive recommendations

While it would be possible to identify hundreds upon hundreds of minute recommendations that would provide some guidance to the Minister, the PSAC/UEW believes it is preferable to provide fewer but more comprehensive recommendations. It is inherently difficult, and likely counterproductive, to micromanage a department, let alone just a part of a department.

Of primary concern is that the Fraser River sockeye salmon continue to be recognized -- both under the federal statutes and under the DFO mandates, policies and procedures -- as a public resource to be used solely in the public interest, subject to any mandatory obligations under section 35 of the *Charter*.

The Federal Government should continue to have the exclusive responsibility with respect to fishing and fisheries management involving Fraser River sockeye salmon. The Federal Government should not contract out this responsibility or leave other persons to be responsible for the fisheries and fisheries management. It is important for all Canadians to continue have direct control and input over the fisheries and fisheries management through Parliament. Therefore, the PSAC/UEW are opposed to any devolution of responsibility away from the Federal Government.

Furthermore, the PSAC/UEW believe that we are on the precipice of a profound funding crisis at the DFO. There is already a planned funding cut of about **\$500 million**: taking the Department from 2 billion to 1.5 billion by 2013-14. However, if the Department comes to feel the full force of a further 10% cut as a result of the Deficit Reduction Action Plan being discussed by Treasury Board, that will mean that the Department will have a budget of 1.3 billion by 2013-14, or a cut of **33% instead of 25%**. Environment Canada has already announced more than a 10% cut in the number of positions in that department, separate and apart from the funding cuts it will be facing because of the Deficit Reduction Action Plan. Of course, the adverse impact of the cuts is increased because of inflation and increased costs, so the effect of the cuts is even greater.

Officials from the Department suggested that more money is not a panacea, what we do know from decades of experience is that underfunding of the Department is a quick acting poison that attacks the health of the Fraser River sockeye salmon.

While the Commission has been hard at work for the last two years, the ground is shifting fast with respect to the Department and its funding as well as Environment Canada and its funding. It is not clear that not even the present activities of protection and enhancement of the Fraser River sockeye salmon will continue, let alone the necessary improvements that have been demonstrated before the Commission.

Although the ground is shifting, the Commission is in the enviable position of being able to influence the direction and magnitude of that change, and even possibly reverse it. The Commission can recommend a halt of damaging cuts to the Department before the Fraser River sockeye salmon feel the brunt of these changes, possibly irreversible changes. In this respect, this Commission is in a much better position than earlier commissions or public inquiries, such as Hon Bryan Williams in 2005 (the “Williams Report”) that had the misfortune of having to go over in detail the damage caused by such cuts.

The testimony before this Commission suggests that the Department, in order to meet the budgets set by the Treasury Board, will be embarking upon new, untested means of fishery management, including involving the Fraser River sockeye salmon. The Department is doing so not because it has studied and examined new means of managing the public resources and finding that these new approaches are at least effective, efficient, reliable, and trustworthy as the existing approaches. Rather it is doing so solely because of a lack of commitment by the Federal Government to fund the Department adequately. When it comes to the Fraser River sockeye salmon decisions must be made not on the basis of what savings can be found, rather they should be made on what will provide the best conservation and enhancement of the Fraser River sockeye salmon.

The Commission heard very compelling evidence from Mr. Randy Nelson, the top conservation and protection officer in the Pacific Region, as to the harm posed by budget cuts and the need to continue and increase funding. He gave detailed and reasoned conclusions as to what was necessary to maintain at least a minimal credible enforcement for the region. He testified the conservation and protection in the Pacific Region did not receive the same level of funding as other regions, which was not explainable by any factor that he could discover. He testified about the necessity of both intelligence-based investigation as well as the feet on the ground enforcement and habitat enhancement. The Commission has also received evidence that demonstrates there has been a 25% reduction in time spent on patrols, investigations and court attendance since 2001.

As a result, the PSAC/UEW is opposed to any recommendations that would diminish the federal capacity relating to fishery enforcement and habitat enhancement. In particular, any recommendation that would result in fewer DFO officers than are presently employed as that would necessarily adversely impact the Fraser River sockeye salmon.

OVERVIEW OF THE PACIFIC REGION¹

In the Pacific Region alone there are over 27,000 kilometers of coastline and hundreds of fish species to protect, manage and enhance. The Region oversees west coast marine resources and the inland fisheries of the Yukon Territory. As the Region is entrusted with managing and protecting and Pacific Salmon, it is involved with 104 river systems in British Columbia as well as the transboundary northern rivers, the Stikine and Taku.

In carrying out Fisheries and Oceans' mandate, over 1300 employees are engaged in diverse and challenging task and activities throughout Pacific Region. Working from offices, field camps, ships and helicopters, their roles are numerous and range from patrol and research vessel officers and crew to community liaison officers, enforcement officers, scientists of all disciplines, economists, policy analysts and advisors.

There are 37 Fisheries and Oceans Canada offices and stations throughout BC and Yukon that operate with an approximate annual budget of \$170 Million. Science Institutes include the Pacific Biological Station, the Institute for Ocean Science, the Centre for Aquaculture and Environmental Research, and the Cultus Lake Salmon Research Laboratory. The 78 DFO-owned core fishing harbours in the Pacific Region are all operated by Harbour Authorities. In addition, the Pacific Region operates 14 major fish hatcheries.

Urban growth and industrial development in the Lower Mainland have put increasing pressure on fish habitat.

Fishery management in the Pacific Region is one of the most complex undertakings because of all of the special features about the fisheries: not simply environmental, geographic, and scientific factors but also the complex legal matrix (involving international, federal, and First Nations considerations).

¹ Most of this section is taken directly from Exhibit 26, DFO Integrated Business and Human Resources Plan Pacific Region, pages 5-6

IMPENDING FUNDING CRISIS AT FISHERIES AND OCEANS CANADA

There is a looming funding crisis at Fisheries and Oceans Canada. Over the next two years, the Government has planned a funding cut of at least 25.85% and that could go as high as 33.27% (compared to the 2010-2011 budget). A reduction of this magnitude would be catastrophic and it is impossible to see how the department can fulfill its mandate over the Fraser River sockeye salmon with such a dramatic elimination of funding, or at least could not do so without putting at risk its ability to fulfill its mandate throughout the rest of the region and the Canada.

The Commission heard from a number of witnesses who testified that the Pacific Region had been able to continue funding positions and projects for the Fraser River Sockeye Salmon from other funding, whether that was funding within the region or funding from national headquarters. But it is now apparent that the flexibility is simply unable to continue with the massive cuts that are planned.

The Federal Government has tabled documents in Parliament providing that over the next two years the budget for the Department will be cut by close to 26% from 2010-11. This reduction of about 500 million in three years does not even include the present requirement from Treasury Board that Fisheries and Oceans Canada prepare a budget with a further 5% reduction As well as a budget with a further 10% reduction. If Fisheries and Oceans Canada faces the 10%, which is possible, this would mean the Department's budget would be reduced by 33% from 2010-2011.

The Report on Plans and Priorities 2011-2012, Exhibit 1922, is the Department's three year plan that the Minister tables in Parliament. This is a comprehensive document, which is given great care and deliberation before being tabled. It sets out the Department's priorities and the budget allocated to meet those priorities. Barring any changes made by Parliament, it will be the budget for the Department. At page 17 of that document, the Department has prepared the following chart indicating the current planned spending for the Department from 2010-2014:

Summary of Departmental Spending (\$ millions)

	Forecast Spending 2010-2011	Planned Spending 2011-12	Planned Spending 2012-13	Planned Spending 2013-14
1 Economically prosperous Maritime Sectors and Fisheries	630.6	533.3	424.8	406.7
2. Sustainable Aquatic Ecosystems	310.9	294.6	272.7	272.7
3. Safe and Secure Waters	738.9	688.8	675.6	603.8
Internal Services	383.9	310.4	305.5	304.0
Total Department Spending	2,064	1,827.1	1,678.6	1,587.2

Note: because of rounding, figures may not add to the totals shown.

As this chart demonstrates, the Department is already budgeted for a reduction of 23% from 2010-11 to 2013-14.

However, the above chart does include the 3% reduction the Government has announced for the Department. As set out above, the Government may alter the forecasted budget. In this case, the Government has altered the forecasted budget **downwards** significantly. Taking the budget tabled June 6, 2011, Exhibit for Identification PPP, and incorporating those reductions into the above chart, the Total Department Spending becomes the following:

	Forecast Spending 2010-2011	Planned Spending 2011-12	Planned Spending 2012-13	Planned Spending 2013-14
Total Department Spending	2,064	1,818.1	1659.7	1,530.4

So, there is a reduction of \$533.60, or about 25.85%, from 2010-2011 to 2013-14.

Some may suggest that the Department's 2010-11 budget is inflated because it includes \$233.4 million identified as money coming from Economic Action Plan. Of course that was money used to fund the essential operations of the Department. Labeling a portion of the Department's funding as part of the EAP does not mean that it was surplus or unnecessary spending --- in fact all money comes from the same place, Federal revenue. Rather, it is clear that this was necessary funding merely with a political label placed upon it. But, even if one were take the EAP money out of the 2010-2011 total, the Federal Government plans to eliminate \$300.2 million (or 16.40%) from the Department's budget.

Again, it is not possible to see how the Department can fulfill its mandate with such a reduction.

The financial future picture for the Department becomes even bleaker when one takes into account the direction from Treasury Board that the Department must prepare budgets with a 5% and 10% further reduction. With the Federal Government stating that it will not cut health and education transfers to the provinces, that means there will be a disproportionate impact on departments, such as the Fisheries and Oceans Canada, with respect to these reductions. So, it is not farfetched to believe that the Department will face further significant cuts.

Taking a 10% reduction to be achieved by 2013-2014 would result in the following:

	Forecast Spending 2010-2011	Planned Spending 2011-12	Planned Spending 2012-13	Planned Spending 2013-14
Total Department Spending	2,064	Unknown	Unknown	1,377.36

Thus, the Department is presently preparing a budget with a reduction of \$686.64 million from the 2010-2011 forecasted spending, meaning a reduction of 33.27%.

Again, while it is our view that it is improper to exclude the EAP funds from the 2010-2011 total, doing so would still result in a massive reduction \$453.24 million or a reduction 24.76% from the 2010-2011 forecast spending.

The final panel before the Commission was Claire Dansereau (Deputy Minister), David Bevan (Associate Deputy Minister, and Former Senior ADM, Ecosystems & Fisheries Management), Susan Farlinger, (Regional Director General, Pacific Region, DFO), and Dr. Laura Richards (Regional Director, Science). The answers provided by the Final Panel on the issue of funding and the future of the Department provides no comfort that the funding crisis will not adversely impact the Department's ability to discharge its duties, including but not limited to Fraser River sockeye salmon. The Panel's Trust Me attitude was troubling as they could not, or would not, identify any areas involving the Fraser River sockeye salmon that would be safe from cutting.²

This Commission, unlike many of the other commissions, such as the Williams Commission, has the opportunity to recommend that the severe reductions not take place or, at the very least, that the funding be maintained for the Fraser River sockeye salmon at the present levels if not increased.

The foreseeable catastrophic result from these cuts can and should be avoided through continued, if not increase, funding for the Fraser River sockeye salmon.

² See for example, Dansereau and Farlinger, September 26, 2011, p 27, l.1 to p.28, l.19

NO REDUCTION OF PRESENT FEDERAL CAPACITY RATHER MUST INCREASE CAPACITY

FISHERIES AND OCEANS CANADA

Related to the imminent financial catastrophe that will result from the planned gigantic funding cut, the PSAC/UEW believes that there should be no reduction in Federal Capacity with respect to the conservation and enhancement of the Fraser River sockeye salmon. This includes not just maintaining or increasing present funding (by which we mean 2010-2011 funding) but also that the public resource be directly managed by the Department so that all Canadian citizens have direct control over the fisheries and fisheries management through the Federal Government. Devolution of responsibility away from the Federal Government with respect to fishery management creates risk and may prevent the essential conservation and enhancement of the salmon stock that all wish to see.

At times speaking of the Fraser River sockeye salmon as unique and integral to the citizens of British Columbia and Canada may seem like just words. But, for those who work day in and day out with the Fraser River sockeye salmon, they are not words, they are tangible beliefs. The employees of the DFO are committed to ensuring the importance of the Fraser River sockeye salmon is not relegated to the history books, but that the Fraser River sockeye salmon continue to be a cultural and economic force in the Province.

As a special public resource, it commands special responsibility on the Federal Government to ensure that persons do not intentionally or (more likely) unintentionally temporarily or permanently damage this unique gift.

Throughout all of the evidence there was no indication that the Department was using its resources inappropriately or wastefully. There was no evidence of excess or gratuitous liberties taken with the public funds. Rather, the history of the Pacific Region demonstrates that the Department has provided it with inadequate funding to discharge its responsibility. Certainly it is unfortunate that it appears to take commissions or other public investigations to come forward and remind the Federal Government of the importance of the Fraser River sockeye salmon and the importance of providing stable and sufficient funding to conserve and enhance the Fraser River sockeye salmon. But, if that is what it takes, one must seize that opportunity.

As a result, this Commission ought to recommend that there be no reduction in Federal capacity with respect to the Fraser River sockeye salmon. In fact, as detailed throughout this section, the evidence has disclosed that the lack of funding has resulted in inadequate Federal capacity for fishery management.

Mr. Randy Nelson is the Director, Conservation and Protection Pacific Region, DFO. He is the top conservation and protection officer in the region. He has worked for decades doing conservation and protection work in the Pacific Region and testified in many of the earlier public inquiries into the Fraser River sockeye salmon. His testimony was as compelling as it was troubling about the present and future challenges for the Pacific Region. He stated that he was so

troubled about the impact of the looming budget cuts (even before the 5-10% possible reductions were even announced) that he had sleepless nights.³

There was some suggestion from Mr. Bevan that Mr. Nelson was not up to date with modern fishery strategy, attempting to undermine Mr. Nelson's compelling testimony.⁴ This suggestion by Mr. Bevan is simply not a credible suggestion given Mr. Nelson's obvious passion, experience as well as his position as to the top enforcement officer in this region. Mr. Nelson testified as to what was necessary to provide a credible enforcement for the Fraser River sockeye salmon while Mr. Bevan appeared to be motivated about what was best for Ottawa.

Mr. Nelson testified that the demands and complexity placed upon the field officers and technicians have been greatly increased. Over the past many years they have been required to not only doing their existing duties but have had more responsibilities heaped upon them. These additional responsibilities are important, including more reporting and tracking, more regulatory oversight, the number of employees has not been increased to allow for the same level of conservation and protection. But, when funding is fixed, increasing workloads will lead to inadequate management of the fisheries.

One especially telling point of the hearing dealt with the unequal funding for the conservation and protection in the Pacific Region, compared to the other regions. Mr. Nelson testified that he examined the financial allocation of resources throughout the region to find out why conservation and protection was not being funded on the same basis in the Pacific Region as the other regions. He examined the type of fisheries, the complexity, the number of people, and the value of the fishery. Again and again the Pacific Region came up as being the most demanding, yet it does not receive the same funding as the other regions. He testified to the following:⁵

So through our best estimates, collective estimates, that's where we thought we would have to be if we wanted to have a proper compliance program in Pacific Region. And I then got the information that shows other regions compared to Pacific Region. And what this graph is is for the next three years, this is a percentage of C&P's budget versus all of the resource management of all the ecosystems and fisheries management. So in other words, if you look at Pacific on far right, we form -- and over the next three years, so if you ignore the colours and just imagine them as an average, we are 22 percent of our ecosystems and fisheries management. And I thought I wonder how we compared to other regions so I put them up here and the ones that are most relative to us are the three East Coast regions, the second, third and fifth columns, because they are coastal Maritime regions, Gulf Maritimes and Newfoundland. National Capital Region is the one in there, it's not really as relevant because it's our Ottawa centre. But if you look at those three, they average 56 percent of their organization.

Now, again, this is salary dollars, not all the other stuff. So just the salary dollars. In this region, C&P is 22 percent of the organization. In the other three, they average 56. And I kept scratching my head, trying to see what was wrong with this and then I thought, well, we have salmon enhancement in this region. And if you go down to the next graph right below this one, I did the same exercise taking salmon enhancement

³ April 8, 2011, p. 61, ll.37-47

⁴ See for example, September 26, p.38 ll. 5-43.

⁵ May 17, 2011, p.79, l.11 to p. 82, l.21

funds out of it and we still only came up to 30 percent versus the average of 56 to the others. So then I thought, well, what would that gap take to bring us up, and ironically, it comes out to 14.9 million, which was in the ballpark of the number we were at. So then the obvious question is, well, what's the relativity in the workload? And I looked at a number of things. All I could think of as far as relatively and in this region, we have more occurrences and violations. We had the same amount of occurrences and violations in this region as they have in the entire rest of the country together. So to me, that's a work indicator. We have as many violations and occurrences as the rest of the country combined.

And I looked at things like, well, population. Maybe we should look at population and figure out how many fishery officers per capita we have. And in Newfoundland, it worked out to one officer for every 4,600. In Gulf, it was one for every 6,000, and Maritimes, one for every 8,000. And in this region, it's one for every 24,000. So when I start putting these numbers together, I start realizing why we're feeling like a little overwhelmed by what we're doing in relation to some of the other regions.

I then looked at, you know, the type of fisheries that we have. We have a marine recreational fishery with 300,000 to 400,000 fishers. They really don't have any recreational fishery back East to speak of. There are just very small amounts in marine environment. In the aboriginal fishery, we have more First Nations and more bands than any other region by a long shot. Our commercial fishery is more complex. We have more integrated fisheries management plans than any other region.

I then thought, well, what about the value of the commercial fisheries. And in this region, based on 2010 information, the value of our commercial fisheries in this region are \$1.2 billion. And in the others, Newfoundland is \$780 million, Maritimes, about 800 million, Gulf Region is about 970 million. So every which way I looked at it, I couldn't -- the other things I looked at were we have the most areas without treaties. We have the most **Sara**-listed species, the **Species at Risk Act**. We have the most habitat work of anybody, the most lineal kilometres of salmon streams in the country. And I honestly couldn't find anything that made this make any sense. So I thought it's important for the Commissioner to see this and I asked the questions and I don't have the answer, but it makes sense to me when I see this gap and we did our exercise to determine what we thought some of our needs were.

There was actually another officer who did another process a totally different way and came up with a similar number. Now, I don't for a minute think that that might be where we end up in this, but there has to be some understanding in our agency, right to the top, that we can't do what you're asking us to do with the continuing funds that we have. And that's really the bottom line. So I just wanted to make sure that that information was -- oh, and another indicator, of course, is vessel traffic on the coast. This coast has a third more vessel traffic, and I'm talking large type vessel traffic than the East Coast combined. So I couldn't find a statistic that could explain to me why such a large variance in numbers of fishery officers.

Therefore, the Commission ought to recommend that the conservation and protection budget in the Pacific Region be raised to equal that of the other regions.

Further, Mr. Nelson testified about the decline of habitat enforcement undertaken in the Pacific Region. He stated that there would have to be 30-40 more officers to reach the same level of

enforcement as there was in 2005.⁶ He also testified that one of the key tools for enforcement is officer presence, meaning feet on the grounds.⁷ It is of course important to have intelligence based investigation, but it is also important to the ‘beat cop’ acting as a deterrent, discovering breaches, and obtaining the intelligence which can be acted upon.

The evidence before this Commission is that notwithstanding some additional funding, such as PICFI, the Department has still not been able to maintain its enforcement presence. For example, from 2000 to 2010 the Pacific Region has endured a 25% reduction in Conservation and Protection hours spent in Patrols, Investigations and Prosecution in the BC Interior, Lower Fraser, and South Coast Areas: going from over 80,000 hours to less than 60,000 hours.⁸ It is not plausible that such a significant reduction in one of the fundamental areas of enforcement is not having a detrimental impact.

The Commission also heard the importance of funding effective enforcement strategies such as nighttime flying. However, the Department has not funded the 1,400 to 1,500 flying hours that the department has identified is necessary to provide an effective deterrence.⁹ Obviously, the Department needs to increase the available flying hours to meet its own standards.

Mr. Nelson compiled a list of funding and operational issues facing the Pacific Region: Exhibit 883, Randy Nelson, Funding & Operational Issues, Conservation and Protection, Pacific Region, May 17, 2011. He set out minimal requirements that he view to be necessary. The PSAC/UEW expressly adopts Mr. Nelson’s assessment as to the Pacific Region’s needs. For convenience we set out his assessment, which as he says does not include the additional funding necessary for areas such as increasing capacity to address issue of illegal sales and compliance audits for catch monitoring which he also recommended:

Although some of these shortfalls aren't from the Fraser River, they do impact patrol coverage in coastal areas where Fraser R. sockeye are harvested. Also reduced presence and availability of fishery officers in any area reduce their availability to be deployed to the Fraser R.

The estimates below do not provide for additional work that may come from new treaties, new security needs, new fisheries, etc. They also do not reflect the costs for an upgraded radio system, estimated to be 11 million dollars over 3 years (CCG), the funding for an Aboriginal Guardian program implementation, capacity to address the issue of illegal sales or a compliance audit of the catch monitoring program.

These estimates are based on knowledge of shortfalls, projected B-based sunset funding issues, and discussions with C&P staff. They should be considered preliminary.

All salary and operational (O&M) requirements stated in this document are required on an permanent and annual basis. Costs to the DFO Infrastructure

⁶ April 8, p77, l.5-23

⁷ April 8, p77, l.46 to p.78, l.4

⁸ figure 10, PPR 13, DFO Policies and Programs for Fisheries Enforcement, page 42.

⁹ PPR 13, DFO Policies and Programs for Fisheries Enforcement, page 82

(offices, vehicles and vessels, etc) for managing additional staff would also be required.

Specific Issues

- **Salary shortfall** – approximately \$1.3 million for fiscal year 2011-12. This shortfall may grow in future years.

\$1.3 million

- **Williams part of PICFI**, - Sunset funded resources due to expire in March 2012. Additional resources to assist C&P in providing a credible enforcement program on the Fraser River. In 2005 the additional funding was \$1.8 million, (including \$500K/year for vehicles for 2 years), this should be A-based to provide adequate patrol coverage on the Fraser R., 60% of existing overtime/operating funds are from PICFI on the Fraser R. during the period 2005 – 2010. This has been the first time that C&P has felt they have had adequate funding to address the illegal fishing activity on the Fraser River. Losing this funding combined with other shortfalls and cutbacks will take us the lowest staff levels in many decades. This does not allow C&P to address habitat as they have in the past due to many other changes in work and priorities.

\$1.8 million

- **PICFI** - \$320K in salary and 600K in O&M were provided for Intel lead enforcement. The plan was to absorb these positions at the end of PICFI in March 2012, and this will no longer be possible due to the funding shortfalls already in place. The salary should be A-based and \$400K in A-base O&M to support Intel lead enforcement and some major case investigations

\$720, 000

- **Industry funded positions (5.5 person years)** should be returned to address the groundfish related fishery issues. The Industry funded positions were discontinued due to a legal challenge. 1200 occurrences were identified in a recent annual audit of ground fish, including about 200 which were considered high priority investigations. All Departmental programs affected by this court decision have been receiving temporary funding, with the exception of C&P. These positions need to be funded with \$420 salary and 180K O&M annually.

\$600, 000

- **Aerial Surveillance Flights** – inland - Fraser River, DFO used to fly over 800 hours (in 1981). Williams funding allows for 150K of flying time, however 250K is required for additional flying time, mostly on the Fraser River but all for Fraser River fish coverage

\$250, 000

- **CSSP (Canadian Sanitary Shellfish Program)** - 760K required to meet current patrol frequency standards. A current note has been forwarded, if the decision is to accept the risk of not reaching the patrol frequency then less would be required.

\$760, 000

- **WWTP- (Waste Water Treatment Program)** - 134K is required to meet DFO's obligations for monitoring waste water treatment plants

\$134, 000

- **Aquaculture**, an effective compliance program would require 2.0 million in additional salary, 350K in O&M and 1.5 million in capital (see C&P submissions).
\$2.350 million + \$1.5 million capital.
- **Isolated Post Allowances** - benefits paid to employees in small isolated locations. Require an additional 50K for new Isolated Post Allowances being established.
\$50, 000
- **Relocation of Fishery Officers** - C&P got 275K for relocations at time of line reporting, however we spend about 500K/year on relocations, need 225K additional O&M
\$225, 000
- **Crown housing maintenance in Isolated locations** - 18 crown houses are required in Pacific region and require 100K/year for ongoing maintenance
\$100, 000
- **Informatics Technology upgrades** – includes computers, hardware and software, 150K
\$150, 000
- **Rigid hull Program Vessel fuel.** Original plans for high speed rigid hull inflatable program vessels included fuel costs, none materialized, require an estimated 200K for RHIB fuel cost. These vessels were meant to help off-set the loss of larger patrol vessels.
\$200, 000
- **SARA – Species at Risk Act** - costs are currently funded through B-based at about 150K, require 300K for credible SARA compliance and protection work
\$300, 000
- **Mid shore patrol vessels** – C&P may be required to place Fishery Officers onto the vessels before any enforcement activities could be undertaken. This would require approximately 40 new Fishery Officer positions to meet these needs, 3.5 million salary and 800K O&M. An alternate approach could be one trained F/O plus 2 trained MEO's. This would still require 15 additional Fishery Officers' at approximately 2 million salary and 300K O&M
\$2.3 - 4.3 million
- **South-eastern BC and North-eastern BC-** In 2000, it was estimated that 17 fishery officers were required to cover these areas after the Old Man River decision (habitat related court decision), new recruits were hired but then decisions were made to handle the new workload from within. New officers and operating money is estimated to be 2.4 million.
\$2.4 million
- **Total Annual Costs \$15.639 million plus 1.5 million minor cap.**

Exhibit 883, Randy Nelson, Funding & Operational Issues, Conversation and
Protection, Pacific Region, May 17, 2011

As identified above, one of the urgent requirements is that the Williams funding be continued. The need identified by the Williams Commission continues today, having those funds subsumed by PICFI did not magically fix the problems. One senior fishery officer states that “loss of Williams funding following the conclusion of PICFI in 2012 will severely compromise C&P Pacific Regions” ability to deliver the program recommended by Williams/SCOFO [Standing Committee on Fisheries and Oceans] and endorsed by the Minister.”¹⁰

If the Fraser River sockeye salmon is as precious a public resource, as everyone says it is, is it not incumbent on the Federal Government to adequately fund their protection and enhancement? Without a credible enforcement, it is like someone placing their most cherished possession out on display for everyone to see and take but relying on the good intentions for people not to succumb to temptation. While the Federal Government may say that it cannot afford the necessary protections, such as those identified by the number one person responsible for conservation and protection in this region, it is really the Federal Government saying that it does not place sufficient value on the Fraser River sockeye salmon and is not willing to do what is necessary to protect it.

PRIVATIZATION

When Federal Governments look to cut their budgets, one notion that frequently is raised is to privatize the Government’s duties and responsibilities. Privatization can take many forms, but in the context of the DFO, privatization can take the form of having some of the participants take over elements fishery management: whether that is enforcement, enhancement, catch monitoring, stock assessment, self-reporting and so forth. Co-management is just one form of privatization. For many years the Federal Government has raised the idea of privatization to escape having to properly fund the Department.¹¹

The concern that arises when governments slash budgets (such as by 25-33% as may happen to the Department) is that the Federal Government will make decisions based on “cost saving” not on whether the changes will ensure the protection and enhancement of the public resources, such as the Fraser River sockeye salmon. Given the vulnerability of the Fraser River sockeye salmon, the Federal Government should not be making changes to its fishery management systems without, at the minimum, establishing that the “modernized” approach will at least be as effective, efficient, reliable and trustworthy as the existing systems.

The DFO is in the process which it is describing as “Modernizing Fisheries Management” and shedding non-core programs. Little was disclosed in these proceedings as to what was meant by this process. Assurances were provided that the DFO would only be cutting non-core activities, but the Department officials were unwilling to disclose what it viewed to be non-core activities.

¹⁰ PPR 13, DFO Policies and Programs for Fisheries Enforcement, para 145

¹¹ See for example Exhibit 502, Senate of Canada - Interim Report on Canada’s New and Evolving Policy Framework for Managing Fisheries and Oceans - Standing Senate Committee on Fisheries and Oceans, p 14-17

Further, no assurances were provided that the current activities involving the Fraser River sockeye salmon were core activities.¹² As a result, the Commission cannot take for granted that even the current steps for the protections and enhancements to the Fraser River sockeye salmon will be maintained.

One of the common events that happen with privatizing, including self-reporting, is that the Government assures the public that although the Government is no longer doing the work directly, that it will nevertheless ensure that the privatized work is done properly through strong auditing and enforcement. But, the Government, facing competing demands on its resources, fails to audit and enforce its own requirements. One needs only examine the stinging criticism, and frank admissions by the Department, as to the shortcomings of the Environmental Process Modernization Plan (EPMP) to see but one example of this promise the failure of self-reporting: see Exhibit 35, *Report of the Commissioner of the Environment and Sustainable Development, Chapter 1 – Protecting Fish Habitat* (Spring 2009). The Department put in place self-reporting, but the Department not only did not police the self-reporting but it reduced enforcement activity by half.¹³

What we do know is that the Federal Government appears to be making these decisions without the benefit of independent assessments as to whether these “modernizing” steps will be as effective, efficient, reliable and trustworthy as the current approach.

Because of all of the competing interests involving the Fraser River sockeye salmon, whether from aboriginal groups, commercial fisheries, recreational fishers, environmentalists and even possibly the aquaculture industry, it is imperative that there is a trusted, neutral fishery management. The participants must have confidence that the decisions are being made not out of self-interest but in full accordance with best fishery management decision-making. Any modernizing must ensure that the current stakeholders have confidence in the fisheries management.

As well, when the Government privatizes fishery management, in many instances they lose the ability to reallocate those resources to areas that have greater need. For example, with respect to Aboriginal Fisheries Guardians, the Federal Government funds these positions pursuant to AFS agreements. However, these DFO paid resources are not available for reallocation to different areas and are instead tied to the area covered by the AFS agreement.¹⁴ So, if there were significant enforcement issues affecting the Fraser River sockeye salmon in one area of the Fraser River, the DFO could not move an Aboriginal Fisheries Guardians from an outside area to deal with the enforcement issue. Of course, if the Department had instead used the money to employ a DFO officer (perhaps of Aboriginal descent) the Department could transfer (temporarily or permanently) that employee to the impacted area to meet the increased need. By

¹² See for example, Dansereau and Farlinger, September 26, 2011, p 27, l.1 to p.28, l.19

¹³ : Exhibit 35 *Report of the Commissioner of the Environment and Sustainable Development, Chapter 1 – Protecting Fish Habitat* (Spring 2009), at page 12

¹⁴ See for example, exhibit 305, Heiltsuk Tribal Council - Comprehensive Fisheries Agreement CFA2009-1919, signed Dec 9, 2009, pp 33-39.

privatizing fisheries management, the DFO is in a worse position to move the resources to the area of greatest need.

The Aboriginal Fishery Guardian program does have some positive traits, one of which is that some Guardians eventually become employees into the Department. However, there are also negative traits, such as the loss of direct control of departmental resources and loss of flexibility to address the areas of greatest needs.

Because of the delicate ecosystem and the vulnerability of the Fraser River sockeye salmon, the DFO should not reduce federal capacity or control over the public resource. Certainly, there ought to be no alteration in the fishery management without first determining, by an independent assessment that the “modernization” will not result in a system that is not as least as effective, efficient, reliable and trustworthy.

ENVIRONMENT CANADA

In August 2011, Environment Canada announced that it would be eliminating over 11% of the positions in the Department, announcing close to 800 positions being eliminated over the next three years, including 300 positions to be eliminated before the end of 2011. This reduction is independent of the Debt Reduction Action Plan announced by the Treasury Board. Unfortunately, these announced changes occurred after representatives from Environment Canada testified at the Commission, so the Commission could not hear testimony about the impact of these significant reductions.

The Commission did hear that Pacific Region DFO has not been advised as to the positions being eliminated and could not assure the Commission that the cuts would not have some impact on the Fraser River sockeye salmon.¹⁵

The reason that the cuts at Environment Canada are important is that not only does Environment Canada have the responsibility of administering and enforcing section 36 of the *Fisheries Act*, which is vital to protecting and enhancing the Fraser River sockeye salmon, but it already has very limited resources as Ms. Manon Bombardier (National Director, Environmental Enforcement Directorate, Environment Canada) conceded.¹⁶

Since the resource available for the Fraser River sockeye salmon are already limited, the Commission ought to recommend that Environment Canada maintain, if not enhance, its capacity in the Province to safeguard the environment for the Fraser River sockeye salmon.

¹⁵ Farlinger, September 26, 2011, p. 26, ll.13-47

¹⁶ April 7, 2011, p.11, l. 39 to p. 2, l.24

INCREASED FIRST NATIONS HIRING

There are many ways that the Department can increase Aboriginal knowledge, experience and perspective into its fishery management. One such way is to increase aboriginal representation in the Department.

Presently First Nations representation in the Department is 3.5%.¹⁷ That representation is roughly approximate to First Nations representation in Canada. However, particularly in the Pacific Region, it would make sense for there to be greater representation.

Bringing more First Nations people into the Department will necessarily broaden the scope of the knowledge, experience and perspectives of the Department as a whole. Rather than being something external or foreign to the Department, these individuals will continue to transform the Department and its management of the fisheries from within. And it will do so in way that maintains the shareholders confidence in a neutral fishery management.

¹⁷ Exhibit 19, DFO's integrated Business and Human Resources Plan 2010-2011, page 12

WILD SALMON POLICY

The Wild Salmon Policy (the “WSP”) provides the Department with a solid foundation upon which to manage the fisheries. The WSP provides a comprehensive approach to the protection and enhancement of the Fraser River sockeye salmon, safeguarded through the genetic diversity of wild populations, maintain habitat and ecosystem integrity and ensuring conservation. Its goal of restoring a healthy and diverse Pacific salmon population is not only laudable but achievable through the mechanisms set out in the WSP. The primary failing of the WSP was the belief that it could be implemented in five years without allocating additional resources to have it fully implemented and without the political will to achieve that goal.

At the time of its announcement, in June 2005, the WSP was a novel approach to fishery management. It presented a necessarily complex and innovative model to address a complex and unique problem. The success of the policy is based upon, in part, finding answers to the unknown or uncertain. Certainly some of the failure to fully implement the WSP is because of the complexity of the science at its foundation.

But, the evidence before this Commission is that the failure to fully implement the WSP while having many identifiable elements, has been caused by a single factor: the lack of political will from top Department officials to direct the necessary resources and place sufficient priority to the full implementation of the WSP.

The attempt to implement the WSP within the existing funding of the Department within five years has been a failure, even taking into account the marginal resources used to kick-start the WSP. The WSP, as a new model of fisheries management, requires significant resources to obtain the necessary scientific and environmental information and to create the appropriate procedures to govern decision-making. It was troubling to hear from the Department that the problem was not the lack of funding necessary to achieve full implementation but by putting in place a timeline for the implementation. Any recommendation from the Commission ought to include a specific time for the full implementation of the WSP by which the Public can assess the Department’s adherence to the recommendation, otherwise top officials may simply continue with the indeterminate partial implementation.

The Commission ought to recommend stable and ongoing DFO funding for the full and timely implementation of the WSP. This recommendation would entail not just DFO headquarters placing sufficient importance to implementing the WSP, not just committing the necessary resources to implement, but also a plan for the implementation with specific goals with specific dates.

**DEPARTMENT SHOULD REMAIN A NEUTRAL SCIENCE BASED REGULATOR AND
SHOULD ACCELERATE ITS EXAMINATION ABOUT THE SCIENCE**

The Department should remain a neutral, science based regulator, ensuring that the best evidence is used to set standards for fisheries, farmed and wild, that protect the environment and the public interest.

Crucial to the proper management decisions is increased science research and increased monitoring of stocks, especially in the open ocean.

Increased science around all aquaculture forms, especially salmon, ensures that aquaculture proceeds in a manner that is sustainable to itself and the wild ecosystem

NO FURTHER OBLIGATIONS ON DFO EMPLOYEES UNLESS INCREASED RESOURCES

Finally, but importantly, the Commission ought to recommend that no additional duties or responsibilities are imposed on the DFO employees unless there is a correlating increase in resources or staffing.

The workers in the Department are obviously committed to the conservation and enhancement of the Fraser River sockeye salmon. The Department is able to function by relying on the commitment of the employees. But there comes a time when the staff simply cannot do more, and that time has passed, if not long since passed.

While the Commission did not hear from the rank and file DFO employees, the totality of the evidence demonstrated that there is not untapped time or energy of the DFO employees. Instead you have the testimony of individuals such as Mr. Nelson and Mr. Coultish portraying an overly taxed workforce as more and more responsibilities and duties are added to the existing workers without any actual elimination of existing duties or increased resources.

Further there is a great risk to the Department as a result of an overturn of staff and an inability to find new employees. By 2014, 40% of the DFO employees will be eligible retire.¹⁸ What this means is that in the near future there will be a significant loss of experience, knowledge and skills in the Department. While all 40% are unlikely to retire immediately, it does demonstrate that the next decade will bring great uncertainty about the Department's ability to function as it is now.

As but one example of how the future loss of workers will cause the Department great difficulty, the Department's commissioned risk profile for Conservation and Protection identifies the loss of employees as a high risk to the ability of the Department fulfilling its mandate.¹⁹ That report established high risk existed due to the staffing concerns. At pages 17 and 18, the Report identifies the sources of the risk

Increased complexity of fisheries management regimes, changes in stakeholder behaviour and particularly an increase in litigious behaviour have all resulted in an increased amount of work for fisheries officers. The Government agenda towards increased accountability has added to workload, specifically through additional audit and evaluation demands, requirements for risk assessments, performance measurement, and HR planning.

Despite successful efforts to increase recruitment, there are several factors hindering the capability of C&P to grow human resources capacity to meet increasing demand. These include a lack of experienced workers to compensate for increased retirements at headquarters, an inefficient HR classification process which leads to a lengthy hiring process. Normal variances in regional labour also adds cost and time to recruiting efforts for example in Northern Canada. Participants also voiced concern that Generation Y will not be interested in the field of work offered by the Directorate.

¹⁸ Exhibit 19, DFO's integrated Business and Human Resources Plan 2010-2011, page 12

¹⁹ Exhibit 713, Fisheries and Oceans Canada Conservation and Protection Risk Profile (Draft), pp 17-18

There are several other “supply” factors which constrain the ability of the Program. The Directorate has also lost positions due to the Laroque decision (Pacific Region) and some of the programs like the Pacific Integrated Commercial Fisheries Initiative (PICFI) program will be sunsetting in about a year. The ending of PICFI funding will mean a cut in the budget of \$1.8 million for which there is, at this time, no alternate sources of funds. The Directorate has also a chronic salary shortfall of about \$5.0 million. The recent freeze on the budgets of federal departments will result in a cumulative impact of over \$3 M within three years. Finally, there are additional financial pressures on the program as a result of other increasing costs including IPA, fuel, CCG vessels, and equipment.

In general, HR Capacity Risk significantly impacts other risks. For example, reduced effectiveness in hiring and development will amplify partnership risks, delivery capability risks, compliance risks, etc.

As the report states, this high risk of loss of human resources capacity increases all the other risks. At pages 18 and 19, the Report sets out the potential consequences, the risk response and mitigation strategies. The Report notes that the current risk exposure is unacceptable:

POTENTIAL CONSEQUENCES

The impacts of diminished or insufficient HR capacity has clear and serious consequences to the organization's ability to achieve its objectives. A reduced federal presence may not provide the deterrent effect that is needed, and it is expected that voluntary compliance would diminish commensurately. As a result of this risk being realized black market participation would increase, and stress and overwork of C&P staff would likely result in further attrition.

From a habitat perspective the consequence may be the further loss of a habitat and failure to meet our no-net loss objective. This in turns has a direct impact on the sustainability of the fisheries resource.

RISK RESPONSE AND TREATMENT

As an enforcement function, Human Resources are critical to the delivery of services provided by C&P. As such management is sensitive to the exposure of this risk. The current exposure is Fisheries and Oceans Canada considered unacceptable and more mitigation strategies will be put into place to manage the risk.

PLANNED MITIGATION STRATEGIES

C&P management observed that one of the areas of control weakness is in staff retention. Senior management recognizes that a strategy must be developed to reduce attrition. This will allow the organization to retain the people and their experience.

At the time of the 2009 assessment, a major funding proposal to deal with the salary shortfall was under consideration by DFO Departmental Management Committee. Unfortunately, DMC did not provide funding to deal with the shortfall and asked that the FAM Sector deal with some of the shortfall internally. Also, a number of the national programs including vehicle capital and air surveillance program have been cut annually to deal with the balance of the shortfall.

While this measure has helped reduce the HR Capacity risk, it increases some of the other risks. An Expenditure and Workload Review has also been undertaken to clearly identify where all C&P resources are going and to find the right balance of salary, O&M, and Capital to optimize the effectiveness of the program.

There are many challenges that the Department has to confront with maintaining a stable and expert employee complement. One additional challenge that should not be created is by imposing more duties on the employees without increasing the resources or employee complement.

CONCLUSION

After much deliberation on the multitude of issues and positions presented by the participants and the extensive evidence heard over more than one year, the Commission will come out with its report and recommendations that will inform and hopefully guide the direction of Fisheries and Ocean's Canada as it continues to oversee the conservation and enhancement of the Fraser River sockeye salmon.

But, without the necessary funding, the Department simply will not be able to act upon the recommendations. That is why, we submit that the first, and most important area, to be addressed is the funding of the Pacific Region. Without a properly funded and staffed Department, there cannot be any hope that the future of the Fraser River sockeye salmon will be protected.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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